

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

UNITED STATES OF AMERICA

v.

PEPO HERD EL, a/k/a,
PEPO WAMCHAWI HERD,

Defendant

CRIMINAL No. 20-mj-5479-JGD

SECOND MOTION FOR EXCLUSION OF TIME
FROM THE RUNNING OF THE SPEEDY TRIAL CLOCK

On Friday, December 4, 2020, the government moved, pursuant to 18 U.S.C. § 4241, for a hearing to determine whether the defendant is mentally competent. The government further moved to exclude any time between a ruling on the motion for a hearing and the date of the hearing itself, from the running of the speedy trial clock, pursuant to 18 U.S.C. §§ 3161(h)(1)(A), 3161(h)(1)(D), 3161(h)(1)(F), 3161(h)(7)(B)(iv).

On Thursday, December 10, 2020, the Court heard the parties on the government's motion and ruled that there is currently reasonable cause to believe that the defendant may be suffering from a mental health problem rendering him "unable to understand the nature and consequences of the proceedings against him or to assist properly in his defense." 18 U.S.C. § 4241.

On Tuesday, December 15, 2020, the Court issued a written order granting the government's motion for a hearing to determine defendant's competency and ordering a mental health evaluation of the defendant before the hearing. The order was silent as to the speedy trial act.

The government's motion to detain the defendant as a danger to the community pursuant to 18 U.S.C. § 3142(f)(1)(E), has been pending since November 27, 2020. As of the date of this filing, no detention hearing can be heard and the government's pretrial motion remains pending. Pursuant to 18 U.S.C. § 3161(h)(1)(D), all time between November 27, 2020, and the date on which the Court can hear the issue of detention is excluded from the running of the speedy trial clock.

All time between December 10, 2020, and the date on which the Court holds a hearing to determine the mental competency of the defendant, attributed to any examination of the defendant and transportation of the defendant for an examination, is excluded from the running of the speedy trial clock pursuant to 18 U.S.C. §§ 3161(h)(1)(A) and 3161(h)(1)(F).

All time between December 2, 2020, and the date on which the Court can resolve the defendant's request to represent himself is excluded from the running of the speedy trial clock pursuant to 18 U.S.C. § 3161(h)(1)(D), as the defendant can fairly be said to have made an oral pretrial motion to represent himself. This time is further excluded from the running of the speedy trial clock because the defendant is actively seeking, but has not yet been permitted, to represent himself. Therefore, to assure continuity of counsel, the time should also be excluded pursuant to 18 U.S.C. § 3161(h)(7)(B)(iv).

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Therefore, for the reasons stated, and for those set forth in the government's December 4, 2020, motion and before the Court on December 10, 2020, the government respectfully moves the Court to issue an order excluding all time from the running of the speedy trial clock, between November 27, 2020, and the date on which the pending motions can be resolved, pursuant to 18 U.S.C. §§ 3161(h)(1)(A), 3161(h)(1)(D), 3161(h)(1)(F), and 3161(h)(7)(B)(iv).

Respectfully submitted,

ANDREW E. LELLING
United States Attorney

By: */s/ Amanda Beck*
/s/ Ben Tolkoff
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CERTIFICATE OF SERVICE

I hereby certify that this document filed through the ECF system will be sent electronically to the registered participants as identified on the Notice of Electronic Filing (NEF) and paper copies will be sent to those indicated as non-registered participants.

/s/ Ben Tolkoff
BENJAMIN TOLKOFF
Assistant United States Attorney

Date: December 17, 2020